

Where a repairman provides repair services that are accompanied with the transfer of tangible personal property, such transactions are generally subject to tax liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.140(l). (This is a GIL).

January 28, 2002

Dear Xxxxx:

This letter is in response to your letter dated November 26, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing this letter to request a letter ruling in regard to sales tax.

The taxpayer has a business that repairs vinyl and leather mostly for car dealers and also sells franchises to do this same type of work. The repair work consists of mostly labor and less than 20% of the bill to the customer is for material supplies.

Question 1.

The taxpayer sells material, supplies, and equipment to its franchises in Illinois. Since the franchise does 95% of work on cars at car dealerships (which are for resale) and 5% of work to individuals, does the taxpayer have to collect sales tax on material and supplies sold to the franchises? Does the taxpayer have to collect sales tax on the equipment?

Question 2.

If the taxpayer does not have to charge the franchise tax on material and supplies, does the franchise have to collect sales tax on work done for individuals? If yes, can the franchisee just pay the use tax to Illinois instead of charging the customer?

Question 3.

The taxpayer is also beginning to do warranty work for furniture stores. When a piece of furniture is damaged during shipping or unnoticed before shipping, the taxpayer goes into the home of the individual and does the repair. Since the customer could return this to the furniture store and then the furniture store can repair and then resell, we are assuming that there would be no sales tax charged to the furniture store (the taxpayer bills the furniture store). Is this correct?

Question 4.

If no sales tax is required to be charged in each of these circumstances, what type of documentation should the taxpayer obtain to be protected during an audit?

From the:

1. Franchisee
2. Furniture Store
3. Car Dealership

We appreciate your help in resolving these issues. If you need clarification on any item please call me.

We are providing the following general information to respond to your questions about repair work. Where a business provides repair services that are accompanied with the transfer of tangible personal property, such transactions are generally subject to tax liability under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.140(l).

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is an unregistered de minimis serviceman that is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Please see 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. A serviceman who incurs Service Occupation Tax on his selling price should provide Certificates of Resale to his suppliers when purchasing tangible personal property that will be transferred to service customers. Please refer to 86 Ill. Adm. Code 140.106, enclosed.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109, enclosed. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers, absent an exemption.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108, enclosed. These de minimis servicemen do not provide Certificates of Resale to suppliers.

Please be informed that firms who do repair work for customers of another business are sometimes secondary servicemen in multi-service situations. Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. See 86 Ill. Adm. Code 140.145 for information about multi-service situations and see 86 Ill. Adm. Code 140.141 for explanations of the tax consequences of warranty repair work.

In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301(a).

When both primary servicemen and secondary servicemen are registered, primary servicemen may give a Certificate of Resale to registered secondary servicemen for any tangible personal property purchased. See Section 140.145(c). Primary servicemen could then collect Service Use Tax from their customers based upon the separately stated selling price of the property or 50% of the bill to the service customers.

If primary servicemen are registered and de minimis, they may choose to remit Service Occupation Tax to the Department based upon their cost price of tangible personal property purchased from secondary servicemen. It shall be presumed that the cost price to the serviceman of the property transferred to him by his or her subcontractor is 50% of the total bill from the secondary serviceman in the absence of proof of the consideration paid by the subcontractor for the purchase of such property. Registered de minimis primary servicemen provide the secondary servicemen with Certificates of Resale if the secondary servicemen are registered, and collect Service Use Tax from customers on their cost price.

Please be advised that the Illinois General Assembly enacted legislation that provides for multi-service situations that involve unregistered de minimis servicemen. Public Act 89-675, effective August 14, 1996, states that if an unregistered de minimis serviceman subcontracts service work to an unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. See Section 140.145(a). This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis, 35 ILCS 110/2 and 115/2.

When an item of tangible personal property is sold at retail, an express warranty from the manufacturer is often included in the selling price. This express warranty obligates the manufacturer to correct defects in materials and workmanship during a specified timeframe. When repairs are made under the terms of an express warranty, no tax is due and this is true whether the manufacturer makes the repairs or whether the manufacturer pays someone else to make the repairs. This is

because the warranty (and the work to be done under the warranty) was included as part of the retail selling price of the item and, as such, was subject to Retailers' Occupation Tax and Use Tax when the item was sold at retail. See 86 Ill. Adm. Code 140.141(b).

Extended warranties are contracts to provide repairs for a particular item for a stated period of time after a manufacturer's express warranty has expired. An extended warranty is not included in the selling price of the item covered by the extended warranty and, for that reason, the selling price of the extended warranty is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. Consequently, repairs made under an extended warranty result in tax liability. Please refer to Section 140.141(c). When repair work performed under extended warranties involve multi-service situations, see the discussion above for an explanation of the tax consequences.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

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Associate Counsel

KWB:msk  
Enc.